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APPLICATION NO.	FI	LING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,875	10/632,875 08/01/2003		Raymond F. Schinazi	60137.0017USU1	3042
23552	7590 06/15/2006			EXAMINER	
MERCHAI	NT & GO	ULD PC	KHARE, DEVESH		
P.O. BOX 2	903			_	
MINNEAPO	DLIS, MN	55402-0903	ART UNIT	PAPER NUMBER	
				1623	

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

1)⊠ Responsive to communication(s) filed on 07 February 2006. 2a)□ This action is FINAL. 2b)□ This action is non-final. 3)□ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)☑ Claim(s) 1-60 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5)□ Claim(s) is/are allowed. 6)□ Claim(s) is/are objected to. 8)☑ Claim(s) 1-60 are subject to restriction and/or election requirement.  Application Papers  9)□ The specification is objected to by the Examiner. 10)□ The drawing(s) filed on is/are: a)□ accepted or b)□ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11)□ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12)□ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a)□ All b)□ Some * c)□ None of: 1.□ Certified copies of the priority documents have been received in Application No. 3.□ Copies of the certified copies of the priority documents have been received in Application No. 3.□ Copies of the certified copies of the priority documents have been received in Application No. 3.□ Copies of the certified copies of the priority documents have been received in Application No. 3.□ Copies of the certified copies of the priority documents have been received in Application No. 3.□ Copies of the certified copies of the priority documents have been received in Application No. 3.□ Copies of the certified copies of the priority documents have been received.	-		Applica	ation No.	Applicant(s)		
Devesh Khare  - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _f MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION If NO DETAIL OR THE MAILING DATE OF THIS COMMUNICATION If NO DETAIL OR THE PROPERTY OF THE MAILING DATE OF THIS COMMUNICATION If NO DETAIL OR THE PROPERTY OF THE MAILING DATE OF THIS COMMUNICATION If NO DETAIL OR THE PROPERTY OF THE MAILING DATE OF THIS COMMUNICATION If NO DETAIL OR THE PROPERTY OF THE MAILING DATE OF THIS COMMUNICATION If NO DETAIL OR THE PROPERTY OF THE MAILING DATE OF THIS COMMUNICATION If NO DETAIL OR THE PROPERTY OF THE MAILING DATE OF THIS COMMUNICATION If NO DETAIL OR THE PROPERTY OF THE	Office Action Summary			,875	SCHINAZI ET AL.	SCHINAZI ET AL.	
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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ½ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time range has available under the provisions of 37 CFR 1.35(e), he no event, however, may a registy be timely filled.  - Explain the of time range has available under the provisions of 37 CFR 1.35(e), he no event, however, may a registy be timely filled.  - If No pariod for registy is specified above, the maximum statistup pried will apply and will explain £(g) MOINTHS from the mailing date of this communication.  - Failure to registy within the set of extended period for registy will, by adultine, cause the application to become ARANDONIED (35 U.S. €, § 130).  - Failure to regist within the set of extended period for registy will, by adultine, cause the application to become ARANDONIED (35 U.S. €, § 130).  - Failure to regist within the set of extended period for registy will, by adultine, cause the application to become ARANDONIED (35 U.S. €, § 130).  - Failure to regist within the set of extended period for register and patent term adjustment. Set 27 CFR 1.704(b).  - Status  - This action is FINAL.  - 2b)			Devesh	Khare	1623		
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Eleteriolar of time may be available under be provided in 37 CFR 1.13(6), his oversh, however, may a reply be finely filed after SX (6) MONTHS from the mailing date of this communication. If the SX (6) MONTHS from the mailing date of this communication of the SX (6) MONTHS from the mailing date of this communication. If the SX (6) MONTHS from the mailing date of this communication of the SX (6) MONTHS from the mailing date of this communication. Plant of the SX (6) MONTHS from the mailing date of this communication. Plant of the SX (6) MONTHS from the mailing date of this communication. Plant of the SX (6) MONTHS from the mailing date of this communication. Plant of the SX (6) MONTHS from the mailing date of this communication. Plant of the SX (6) MONTHS from the mailing date of this communication. Plant of the SX (6) MONTHS from the mailing date of this communication. Plant of the SX (6) MONTHS from the mailing date of this communication. Plant of the SX (6) MONTHS from the mailing date of this communication. Plant of the SX (6) MONTHS from the mailing date of this communication. Plant of the SX (6) MONTHS from the mailing date of this communication. Plant of the SX (6) MONTHS from the mailing date of this communication. Plant of the SX (6) MONTHS from the mailing date of this communication. Plant of the SX (6) MONTHS from the mailing date of this communication. Plant of the SX (6) MONTHS from the mailing date of this communication. Plant of the Comm	Period fo		ation appears on	the cover sheet	with the correspondence addre	SS	
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2. Certified copies of the priority documents have been received in Application No  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)    Notice of References Cited (PTO-892)	۵)		ocuments have h	een received			
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* See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)    Outline   Outline		•	, ,			3-	
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Applicant's remarks filed on 02/07/2006 are acknowledged.

The rejection under 35 U.S.C. 102(e) of the Office Action dated 11/07/2005 has been withdrawn in response to applicant's remarks.

Claims 1-60 are currently pending in this application.

## Election/Restrictions

Restriction is required under 35 U.S.C. 121:

- I. Claims 31-60 drawn to a pharmaceutical composition comprising the dideoxy nucleosides of structure represented in claim 31, classified in classes 514, 424 and 536, subclass various.
- II. Claims 1-30, drawn to a method for the treatment of an HCV infection in a host, comprising administering to the host an effective amount of the compound according to claim1 of Group I, classified in classes 514, subclass various.

The inventions are distinct, each from the other because of the following reasons:

Groups I to II are related as product and process of using. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the claims are drawn to a method for the treatment of an HCV infection in a host, comprising administering to the host an effective amount of the

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compound according to claim1, indicating that the treatment of an HCV infection in a host can be achieved in a host by a different product such as 2'-methyl-3'-hydroxy nucleoside compounds (see Office Action dated 11/07/2005: Bhat et al. U.S. Patent 6,777,395).

Although the inventions are classified in the same class and sub-class, searching the two groups of inventions constitutes a burdensome search, as a thorough search comprises a search or foreign patents and non-patent literature as well as the appropriate U.S. patent classifications. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their divergent subject matter, restriction for examination purposes as indicated is proper. It is noted that examination of the two independent and distinct inventions would indeed impose an undue burden upon the examiner in charge of this application.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143). If applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims, which depend from or otherwise include all the limitations of the allowable product claim will be rejoined. (MPEP § 821.04)

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04.

Process claims that depend from or otherwise include all the limitations of the patentable product will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103, and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of In re Ochiai, In re Brouwer and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. Failure to do so may result in a loss of the right to rejoinder. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

Any inquiry concerning this communication or earlier communications from the

Examiner should be directed to Devesh Khare whose telephone number is (571)272-0653. The examiner can normally be reached on Monday to Friday from 8:00 to 4:30. Application/Control Number: 10/632,875 Page 5

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anna Jiang, Supervisory Patent Examiner, Art Unit 1623 can be reached at (571)272-0627. The official fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Devesh Khare, Ph.D., J.D. Art Unit 1623

June 12, 2006

Supervisory Patent Examiner Technology Center 1600